

# **Exhibit F**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE:

4 APPLICATION OF XPO LOGISTICS, INC. 15 MC 205

5 -----x

New York, N.Y.  
July 20, 2015  
5:30 p.m.

7  
8 Before:

HON. RONNIE ABRAMS,

District Judge

10 APPEARANCES (Telephonic)

11  
12 KLEINBERG, KAPLAN, WOLFF & COHEN  
Attorneys for Elliott Applicants  
13 BY: DAVID PARKER

14 GIBSON DUNN  
Attorneys for Elliott Applicants  
15 BY: ROBERT SERIO  
MATTHEW MCGILL  
16 MARK DOERR

17 HOLWELL, SHUSTER & GOLDBERG  
Attorneys for XPO Respondent  
18 BY: MICHAEL SHUSTER  
VINCENT LEVY  
19 JAYME JONAT

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1 (In chambers)

2 THE COURT: Hi, this is Judge Abrams.

3 MR. SERIO: Good afternoon, Judge Abrams, this is  
4 Robert Serio from Gibson Dunn. With me are Matthew McGill and  
5 Mark Doerr from my firm and David Parker from the Kleinberg  
6 Kaplan firm, and we are representing the Elliott applicants on  
7 this application.

8 THE COURT: Good afternoon.

9 MR. SHUSTER: Good afternoon, your Honor, this is  
10 Michael Shuster from Holwell, Shuster & Goldberg, and with me  
11 are my colleagues Vincent Levy and Jayme Jonat, and we  
12 represent XPO, the party from which discovery is being sought.

13 THE COURT: All right. Good afternoon to all of you  
14 as well.

15 So first I just want to say, like with our last call,  
16 I have a court reporter here, so I'm just going to ask that you  
17 state your name before you speak.

18 Just so everyone is on the same page, let's refer to  
19 XPO as petitioner and all of the Elliott entities as  
20 respondents.

21 As you all know, the purpose of the call is to discuss  
22 respondent's ex parte application for an order of judicial  
23 assistance pursuant to 28, United States Code, Section 1782. I  
24 have petitioner's letter objecting to the relief sought, and  
25 since both parties have appeared before this Court, I thought

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1 it made sense to have a conference, and we're doing this by  
2 telephone in light of the time sensitivity.

3 I'll let you know that my inclination from the start  
4 is that respondents like petitioner are entitled to discovery  
5 under 28 USC 1782. Judge Ramos has already ordered such relief  
6 for petitioner, and so respondents, in my view, are entitled to  
7 at least some form of reciprocal relief.

8 The primary issue that I'm struggling with, and I want  
9 you all to focus on, in good faith and realistically, if you  
10 can, is what needs to happen before the Paris hearing on the  
11 23rd and what can happen afterwards.

12 So let's start, for example, with the documents  
13 subpoena. I will say that I am not sure that I understand why  
14 respondents waited so long to seek a court order and why they  
15 didn't do so immediately upon being served with petitioner's  
16 subpoena, or even late last week. But let's put that aside for  
17 a minute and talk about where we are now.

18 It looks like there are essentially two requests, one  
19 for all readily available documents by July 22nd at noon and  
20 then for any remaining documents responsive to your request to  
21 be produced on the afternoon of July 27. So I just would like  
22 to hear from the parties as to what you think is reasonable for  
23 petitioner to produce by Wednesday at noon, and then from there  
24 go and see why you're even suggesting, Elliott, that a July 27  
25 date is necessary for the rest.

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1 MR. SERIO: Well, your Honor, what I would say in  
2 terms of what is doable for this week before the July 23rd  
3 hearing --

4 THE COURT: Who is speaking now? Is that Mr. Shuster?

5 MR. SHUSTER: No, that was Mr. Serio.

6 THE COURT: Mr. Serio, go ahead.

7 MR. SERIO: We have for some days been suggesting that  
8 reciprocal discovery should occur, and the things that we are  
9 most interested in are documents relating to the strategic  
10 purpose for the transaction, the valuations, the synergies and  
11 the plans for integration of ND. It seems to us that there  
12 should be readily accessible materials that are board  
13 materials, things that have possibly been prepared by  
14 investment bankers. This is a multibillion dollar acquisition.  
15 It's been a focus of XPO for some months, certainly since  
16 April, and we have been seeking reciprocal discovery informally  
17 through our discussions in the meet and confers since last  
18 Tuesday and specifying what we want on Thursday and Friday.

19 So it would seem to us that, just in the way that we  
20 have moved heaven and earth having 25 lawyers do e-discovery  
21 over the weekend and producing 20,000 pages so, that  
22 petitioners could have documents in front of their July 23rd  
23 hearing. That fairness would require certainly not -- the  
24 timing does not permit the kind of production that we have  
25 made, but certainly we should begin to get the documents that

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1 are readily available. Transactions of this type have certain  
2 standard documents. Mr. Shuster and his firm certainly know  
3 what they are. XPO, if you go on their web site, they have  
4 purchased company after company. They clearly have, I would  
5 imagine, an in-house group that is responsible -- a development  
6 group that is responsible for acquisitions. And I'm sure that  
7 it would be very easy to lay hands on just the sorts of  
8 documents that would give the answers to the questions that are  
9 going to come up in our July 23rd hearing where the French  
10 court is going to decide whether to continue the freezing order  
11 that has been issued against XPO to prevent it from dismantling  
12 ND in violation of the rights of minority shareholders such as  
13 Elliott.

14 I know your Honor doesn't want to hear a lot about why  
15 we didn't serve it earlier.

16 THE COURT: No, I'm actually happy to hear it, because  
17 I have to tell you, I am curious. As you know, it's now 5:40  
18 on Monday. You brought this to court a couple of hours ago.  
19 Again, I haven't heard either side indicate that they asked the  
20 Paris court for an adjournment. Again, I'm not encouraging you  
21 to do that, but it seems like there's this urgent time pressure  
22 on both sides, and I'm trying to understand why everything is  
23 being done last minute and what you really need and for when.

24 MR. SHUSTER: Your Honor --

25 THE COURT: Let Mr. Serio respond, please.

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1 MR. SERIO: Two points on that, your Honor. First is  
2 that our client, Elliott, would be perfectly willing to have  
3 more time to adjourn both -- I mean I think the point is that  
4 we had to respond in good faith to the ex parte order of Judge  
5 Ramos, and that took an immense amount of work. We were in  
6 meet and confer discussions with search terms and this and  
7 that, and we had to have a huge team of people preparing our  
8 response, which was a voluminous review, some of the documents  
9 were in French, we had to have French/English fluent lawyers,  
10 and it literally took 25 people working full out Friday,  
11 Saturday, Sunday to do that, while at the same time we were --  
12 another group of folks were preparing these papers to make a  
13 showing that we were entitled to reciprocal discovery.

14 That should be quite clear. I mean after all, Intel  
15 itself, a case that lays out the discretionary factors, the  
16 Supreme Court case, says that courts can condition 1782  
17 discovery on reciprocal discovery. And certainly were this not  
18 an order that had been entered against us ex parte, we would  
19 have, since the first day, been asking for it. Instead we took  
20 the approach of asking our responsible opposing counsel, who  
21 were well known and well esteemed, for reciprocal discovery.  
22 And I think that we were rope-a-doped, to some extent, and we  
23 thought that they would be willing to make some reciprocal  
24 discovery, and then we found out that they did not think that  
25 they would.

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1           So we then made this application, and we understand  
2           that we can't get the full -- we're not going to get 20  
3           some-odd thousand pages of documents as we just produced to  
4           them at 8 o'clock this morning per your Honor's order, but we  
5           could very well get, without too much burden and imposition,  
6           some helpful materials for the July 23rd hearing.

7           And likewise, we think that a single deposition of a  
8           knowledgeable representative of XPO -- they must have plans in  
9           terms of how they see the synergies of this acquisition and  
10          what they intend to do with the assets. I'm sure a number of  
11          executives must be well aware of the plans, and we simply would  
12          like to ask them what their plans are and get their testimony  
13          in a straightforward deposition before Thursday. And we  
14          understand we won't have a lot of document for that, we would  
15          like to hear what their plans are.

16          THE COURT: Mr. Shuster or anyone else who would like  
17          to respond?

18          MR. SHUSTER: Yes, your Honor, thank you.

19          Let me just briefly address the rope-a-dope point. At  
20          no time did we give the impression that we were going to  
21          provide the reciprocal discovery that the other side was  
22          seeking such that they were in any way duped into believing  
23          they wouldn't have to go seek relief. And part of the reason  
24          we didn't is because when they did ultimately identify the  
25          scope of what they wanted, it seemed to us to be grossly



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1 overbroad, and frankly, it was at that point we realized we  
2 were going to be in front of a judge. So that's one.

3 Two, they were raising the issue of reciprocity as  
4 some kind of precondition to complying with their own  
5 compulsory obligations under the order that the Court issued,  
6 and we did not believe that was appropriate, and we were trying  
7 to focus on getting the material called for by our subpoena.

8 As to the fact that they had people working on this  
9 over the weekend, Mr. Serio mentioned they had people working  
10 Friday, Saturday and Sunday, there was nothing stopping them  
11 from having people working Monday, Tuesday, Wednesday and  
12 Thursday, and they should have, and I still don't understand  
13 why they have waited until today.

14 I mean we know they have three law firms involved  
15 here, they have the Kleinberg firm, they have Mr. Parker's  
16 firm, which is the Kleinberg firm, they have Gibson Dunn, and  
17 they have Orrick, which submitted an affidavit here. They  
18 surely could have prepared an application. If they really  
19 needed materials and they needed them before the July 23rd  
20 hearing, they surely could have waited -- they surely could  
21 have prepared and submitted that application before today.

22 And today, to put us under an order to provide  
23 documents by noon on Wednesday is really extreme and was easily  
24 avoidable. I mean really, this is like trying to habeas corpus  
25 death row timeline. This is absurd. It's unnecessary. And

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1 the French -- the hearing starts on Thursday the 23rd, I  
2 understand it's in the morning in France, so that is on  
3 Thursday, you back up, which means you're into three o'clock in  
4 the morning here on Wednesday. So it puts us -- it  
5 unnecessarily puts us through a fire drill.

6 From what I understand, going through your Honor's  
7 question about what needs to be done before and what can be  
8 done after, first of all, I reiterate that if any of this  
9 needed to be done before the 23rd, if it was truly necessary,  
10 Elliott would have found a way to have its lawyers make the  
11 application before Monday at 2 o'clock.

12 If they really felt they needed and wanted the  
13 information, they would have made it their business to do  
14 things in an orderly fashion. But from what I understand from  
15 what they're doing in France, they are seeking to have the  
16 court appoint an independent expert who would then conduct his  
17 or her own investigation into XPO and ND's proposed integration  
18 activities and into whatever alleged conflicts exist. That  
19 expert, presumably, will want information, but that expert  
20 hasn't been appointed yet.

21 Once that expert is appointed, I'm sure, if that  
22 expert is appointed, it will be a lot easier to identify what  
23 information is required and when. But to put us through our  
24 paces now to provide information in advance of the 23rd when  
25 that's the issue, that's the relief that they have sought

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1     there, seems to me to be extreme and unwarranted under the  
2     circumstances given their failure to exercise just ordinary  
3     self help that was available to them.

4             MR. SERIO: If I could respond to several of those  
5     points, your Honor. First of all, it is not right that we  
6     conditioned our production on their making reciprocal  
7     discovery. We did ask for reciprocal discovery, but we did not  
8     condition it. We offered to begin production at a time  
9     tomorrow, and your Honor asked to us produce this morning,  
10    which we did.

11            We did not even have the -- in terms of why we weren't  
12    working on Monday, Tuesday and Wednesday, we didn't have their  
13    search terms until Wednesday, and we were in with your Honor  
14    talking about the schedule on Thursday. We have moved as  
15    quickly as we could have under the circumstances, and indeed, I  
16    think to some extent Mr. Shuster and his colleagues have not  
17    been forthcoming. They might have provided search terms on day  
18    one and that might have been enabled us to move faster.

19            In terms of why we couldn't go into court, this  
20    application covers both discovery that would be useful for our  
21    defensive position in the case brought against Elliott by XPO,  
22    which is also being heard on July 23rd, and discovery that  
23    would be useful in Elliott's affirmative case against XPO, also  
24    being heard on the 23rd. And Elliott's case against XPO was  
25    not even filed until July 16, last Thursday, so we were not in

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1 a position to move for relief until we were able to have that  
2 sort of late in the day on Thursday, we got transmission of the  
3 papers, we had to review them and prepare an application.

4 I mean the person here who had control of this process  
5 from the beginning was XPO, which knew, when they were doing  
6 their tender offer, they brought an ex parte proceeding to  
7 impress in France to obtain a freezing order against Elliott,  
8 and clearly Mr. Shuster's proceeding was in the works because  
9 it was only within two days later they were in here. So that  
10 was all a plan where they were in France and we had moved in  
11 response to that as quickly as humanly possible.

12 Whether they in fact needed this, when I look -- I'm  
13 not a French lawyer, but when I look at the complaint that they  
14 have filed, a lot of these facts are not reasonably in dispute.  
15 I mean Elliott purchases were probably disclosed by Elliott,  
16 its holding purchases were disclosed to the AMF and ND as they  
17 went along. So I don't know that they had this purported need  
18 for factual information.

19 Certainly we have a significant need for factual  
20 information about what they are going to do with ND assets,  
21 since we are a more than six percent shareholder that has  
22 rights, and they have made relief saying they intended to  
23 make -- integrate the company ND within the new group,  
24 including through mergers and contribution. So that raises the  
25 issue of whether Elliott's rights will be preserved for the

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1 French proceeding.

2 THE COURT: Look -- sorry, I thought you were done,  
3 you can finish.

4 MR. SERIO: I was pretty much done, I was going to say  
5 that's why we're here.

6 THE COURT: I didn't mean to cut you off.

7 Look, I think there have been some delays by Elliott,  
8 and I think that that puts XPO in a difficult position. That  
9 being said, I don't think that that means that it's  
10 unreasonable to require the production of some documents by XPO  
11 by July 22nd, even if that means working very hard over the  
12 next two days.

13 But the reality is that that production is going to be  
14 smaller than it would have been if Elliott had come to court  
15 sooner. So I am essentially going to grant a modified version  
16 of Elliott's proposed order with all readily available  
17 documents due by noon on July 22nd.

18 As for the rest of the documents, I don't understand  
19 why you need them by July 27th at noon, and that does seem  
20 unreasonable to me.

21 I'm happy to hear you out on that, Mr. Serio, but why  
22 did you put in that July 27 date?

23 MR. SERIO: Well, your Honor, in fairness, it was just  
24 parity, because when they sent their ex parte schedule they put  
25 a week out. I am happy to extend that to a week or two weeks

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1 beyond that if that is deemed more reasonable.

2 THE COURT: I definitely think you should put that  
3 out. The reason that it was on an expedited basis is because  
4 the Court was trying to get you what you need in advance of the  
5 hearing, of course, but I don't think that that means that you  
6 need people working around the clock for an artificial  
7 deadline.

8 So again, I'm going to grant your request for readily  
9 available documents by noon on the 22nd, but I want you all to  
10 get together and try and agree on a proposed return date for  
11 the remainder of the documents, and if you have a conflict  
12 about it, I will choose the date. So you will let me know.

13 With regard to the deposition subpoena, I will tell  
14 you June 22nd at noon strikes me as unduly burdensome, so I'm  
15 not going to grant that request, but I will grant the readily  
16 available documents by noon on the 22nd.

17 MR. SERIO: Thank you, your Honor. But we could -- in  
18 other words, to extent that we could take depositions at a  
19 later date on a schedule along the lines of what XPO set for  
20 their depositions.

21 THE COURT: Right. I'm not precluding your ability to  
22 take reciprocal discovery, but my recollection is that the date  
23 that Judge Ramos approved, pursuant to that date, or pursuant  
24 to his order, the depositions aren't going to be conducted  
25 until mid August, which seems like a much more reasonable time

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1 frame, in my view.

2 MR. SERIO: Correct. So we'll get on that schedule.

3 THE COURT: So why don't you -- XPO should produce  
4 what is readily available by noon on July 22nd, and then you  
5 all should get together and try to agree on dates both for  
6 depositions and for the remainder -- the production of the  
7 remainder of the documents.

8 And if there are any other requests, I'm on Part I for  
9 the rest of the week, and I'm happy -- I would rather not, but  
10 I'm happy to hear you out on any disputes that you may have.

11 MR. SERIO: Thank you, your Honor, I appreciate that.  
12 And just one point in terms of what your Honor was talking  
13 about, if the freezing order against XPO were to remain in  
14 place until the adjudication of the merits, we would have no  
15 need for documents by July 23rd. So if Mr. Shuster and his --  
16 if he confers with his clients and they're willing to agree to  
17 the freezing order, or if it gets extended, then that would be  
18 fine.

19 (Inaudible)

20 THE COURT: We couldn't hear you, Mr. Shuster, did you  
21 say if it gets lifted?

22 MR. SHUSTER: No, I didn't say anything. My  
23 colleagues might have been -- no, it wasn't us.

24 THE COURT: Sorry, we couldn't hear over here.

25 MR. PARKER: I didn't identify myself. It was David

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1 Parker talking to Mr. Serio, and I didn't realize it was being  
2 picked up.

3 THE COURT: So are we all clear on next steps?

4 MR. SHUSTER: Yeah, the only thing I would ask is just  
5 a technical matter, I'm going to ask the court reporter for an  
6 expedited copy of the transcript for the parties. Forgive me  
7 for doing logistical business, but I don't want to --

8 THE COURT: You can place the order through web site.

9 Thank you, all.

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